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APPEALS [illegible]

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 316

THE HECHT COMPANY, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the District Court (R. 441–447) is reported in 49 F. Supp. 528. The opinion of the United States Court of Appeals for the District of Columbia (R. 593–610) is reported in 137 F. (2d) 689.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered

on July 22, 1943 (R. 610–611). The petition for a writ of certiorari was filed in this Court on September 2, 1943. The order of this Court granting the petition was entered on October 18, 1943 (R. 612). Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code of the United States as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347 (a)).

QUESTION PRESENTED

Whether the Price Administrator, having shown that a defendant has engaged in acts and practices violative of Section 4 of the Emergency Price Control Act of 1942, is entitled as of right to an injunction restraining such defendant from engaging in such acts and practices.

STATUTE AND REGULATION INVOLVED

The case involves the Emergency Price Control Act of 1942 (Act of Jan. 30, 1942, 56 Stat. 23, 50 U. S. C. Appendix, Supp. II, Sec. 901; hereinafter referred to as the Act), and the General Maximum Price Regulation (7 Fed. Reg. 3153; hereinafter referred to as the Regulation) issued thereunder.

The applicable provisions of the Act are Section 205 (a), under which this suit was begun, and Section 4 (a), which prescribes the unlawful acts for the restraint of which proceedings may be

instituted under Section 205 (a). Section 205 (a) reads as follows:

> Sec. 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 4 (a) reads:

> Sec. 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

The Regulation was issued under Section 2 of the Act on April 30, 1942, and became effective on May 18, 1942. The Regulation, so far as here pertinent, reads as follows:

§ 1499.1 *Prohibition against dealing in commodities or services above maximum prices.*—On and after the effective date of this General Maximum Price Regulation, regardless of any contract or other obligation:

(a) No *person* shall *sell* or deliver any *commodity,* and no person shall sell or supply any *service* at a price higher than the maximum price permitted by this General Maximum Price Regulation;

* * * * *

§ 1499.2 *Maximum prices for commodities and services: general provisions.*—Except as otherwise provided in this General Maximum Price Regulation, the *seller's* maximum price for any commodity or service shall be:

* * * * *

(a) The highest price charged by the seller during [March 1942]:

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it; or

(b) In those cases in which the seller did not deal in the same or similar commodities or services during March 1942:

The highest price charged during such month by the *most closely competitive seller of the same class*—

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it.

* * * * *

§ 1499.11 *Base-period records.* — Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation, shall,

(a) Preserve for examination by the Office of Price Administration all his existing *records* relating to the prices which he charged for such of those commodities or services as he delivered or supplied during March 1942, and his offering prices for delivery or supply of such commodities or services during such month; and

(b) Prepare on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing:

(1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identi-

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fication of each such commodity or service; and

(2) All his customary allowances, discounts, and other price differentials.

* * * * * *

§ 1499.12 *Current records*—Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices for those commodities or services.

* * * * * *

§ 1499.13 * * *

(b) On or before July 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the *appropriate war price and rationing board* of the Office of Price Administration a statement showing his maximum price for each such commodity, together with an appropriate description or identification of it. Such statement shall be kept up to date by such person by filing on the tenth day of every succeeding month a statement of

his maximum price for any cost-of-living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity.

STATEMENT

The record in this case contains substantially no conflict of testimony as to objective facts. The findings of fact of the district court (R. 447–454), which petitioner in its brief (Br. 3–13) quotes verbatim as its statement of the case, rest in general upon uncontroverted evidence. However, these findings present a limited and one-sided picture of the case proven without dispute by the Price Administrator; and, furthermore, we believe that certain conclusions, both of fact and of law, drawn by the district court are without warrant in the proof (e. g., certain statements in paragraph 12 of Findings of Fact (R. 453–454) and in paragraph 4 of Conclusions of Law (R. 454); cf. the comments in the opinion of the court below (R. 595–596)). Accordingly, we restate the case as we believe it should be presented to the Court.

The petitioner operates a department store in Washington, D. C. The store is divided into 107 departments, each selling a separate line of merchandise. (R. 449.)

In September 1942 the Office of Price Administration began an investigation to ascertain whether

the petitioner was complying with the Act and the Regulation. Because of practical exigencies no attempt was made to examine thoroughly into every department of the petitioner's store or into every sale made in the departments investigated. It was simply a "spot check". (R. 27, 42, 45, 46.) The investigation was confined to seven departments of the petitioner's store, namely, Department 55 (Women's Shoes), Department 47 (Women's Hosiery), Department 26 (Students' Clothing), Department 59 (Living Room Furniture), Department 60 (Bedding), Department 69 (Case Goods Furniture), and Department 76 (Occasional Furniture) (R. 25). In each department investigated the examination disclosed violations of the Act and of the Regulation (R. 596–597).

As a result of the investigation this action was started. The complaint charged the petitioner with having violated the Regulation (a) in selling and delivering and offering for sale or delivery commodities subject to the Regulation at prices in excess of the prices permitted thereby (Sec. 1499.1); (b) in failing to prepare on or before July 1, 1942, and thereafter to keep for examination by any person during ordinary business hours a statement prepared in accordance with Section 1499.11(b)(1) and (b)(2) of the Regulation; (c) in failing to keep current records in conformity with the provisions of Section 1499.12

of the Regulation; (d) in failing to prepare and file with the proper War Price and Ration Board a statement of its maximum prices in conformity with Section 1499.13 of the Regulation; and (e) in failing to keep the statement of its maximum prices up to date in conformity with the provisions of Section 1499.13 of the Regulation (R. 1–3).

The petitioner in its answer denied generally the essential allegations of the complaint and further pleaded that any failure or neglect to comply with the Regulation was wholly involuntary, was corrected as soon as discovered, and was so inconsequential and unsubstantial compared with the substantial compliance by the petitioner that it did not constitute a basis for the issuance of an injunction (R. 11–12).

At the trial proof of the Administrator's case was made by way of oral testimony and exhibits. The evidence so offered afforded a striking picture of the petitioner's widespread violation of the Regulation from May 18, 1942, to October 21, 1942.

The petitioner's witnesses admitted that in the four furniture departments alone (Departments 59, 60, 69 and 76) during the period from May 18, 1942, to October 22, 1942, 847 sales dealt with by the Administrator's evidence [1] were made

[1] The investigation in the four furniture departments was limited to those commodities which were delivered in March (R. 50, 57, 63, 67).

at prices above the maximum prices permitted by the Regulation, and that in these sales the petitioner had illegally obtained from its customers the sum of $3,351.53.[2] In at least 42 of these instances the sale prices not only exceeded the legal maximum prices, but even exceeded prices which the petitioner had reported to the Office of Price Administration as its legal maximum prices but which were, in fact, above the legal maximum.[3]

In many instances merchandise purchased after May 18, 1942, was sold without any prior establishment of legal maximum prices, and, further, was sold at varying prices, most if not all of which exceeded the retail sale prices set by the department heads at the time of purchase.[4] Petitioner's records were kept in such a manner that neither petitioner nor anyone else could ascertain whether these sales were at prices higher than the legal maximum (R. 55, 56, 60, 62, 66, 68, 70).

[2] Sales and overcharges by departments were as follows: Department 59, Living Room Furniture: 149 sales and $1,071 overcharges (Plaintiff's Exhibit 13, R. 546; Testimony, R. 358–375); Department 60, Bedding: 309 sales and $1,233.04 overcharges (Plaintiff's Exhibit 31, R. 478; Testimony, R. 243–263); Department 69, Case Goods: 225 sales and $732.87 overcharges (Plaintiff's Ex. 20, R. 515; Testimony, R. 292–320); Department 76, Occasional Furniture: 164 sales and $314.62 overcharges (Plaintiff's Exhibit 36, R. 537; Testimony, R. 342–356).

[3] R. 298–301, 305–306, 315–316, 318, 321–322, 324–325, 343, 347, 349–351, 398–399.

[4] Plaintiff's Exhibits 33, R. 512; 14, R. 554; 37, R. 545; 22, R. 530; 29, R. 477; 39, R. 465; 6, R. 456; Testimony, R. 237–240; 375–376; 337–340; 288–291; 205–207; 214.

In Departments 26 (Students' Clothing) and 47 (Women's Hosiery) petitioner's records were not adequate to permit identification of individual sales (R. 30, 40). However, the uncontroverted evidence showed that in Department 26 not less than 13 separate styles of merchandise were marked up and sold at excessive prices, resulting in overcharges of $104 (Plaintiff's Exhibit 7, R. 459; Testimony, R. 184–190, 401). Since no commodity was marked up more than $2.50 over the legal maximum price (Plaintiff's Exhibit 7, R. 459), it follows that in this Department there were not less than 41 illegal sales. Similar mark-ups of at least 10 styles of merchandise in Department 47 resulted in overcharges of $1,166 (Plaintiff's Exhibit 41, R. 469; Testimony, R. 215–224, 402); and since no commodity was marked up more than $0.40 over the legal maximum price (Plaintiff's Exhibit 41, R. 469), there were in this Department no less than 2,900 illegal sales.

It was thus proven without controversy that in six of the seven departments investigated[5] there had occurred during the period covered by the investigation a minimum of 3,788 sales at excessive prices, resulting in illegal overcharges of $4,621.53.

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[5] In Department No. 55 (Women's Shoes), while no sales over the ceiling prices were actually made, at least one commodity was offered for sale at over its ceiling price for a considerable period of time.

Petitioner's performance in preparing and filing its required Statements with the appropriate War Price and Ration Board was no more satisfactory. The testimony showed that at least 460 articles of merchandise sold by petitioner after the effective date of the Regulation were omitted from the Statements.[6] In the Statements which were introduced in evidence[7] 410 items included therein were listed without style numbers or other appropriate means of identification. The petitioner's witnesses admitted that prior to October 1, 1942, very few records were kept from which it could be determined how the maximum prices had been established for merchandise purchased after May 18, 1942. It is true that petitioner prescribed a form (Plaintiff's Exhibit 4, R. 470) for the making and keeping of such records, and one of petitioner's officials testified that he thought that several thousand of such forms had been filed up to the first of October (R. 230).

[6] Plaintiff's Exhibits 26, 27, and 28, R. 471, 475, 476; Testimony, R. 200–214; Plaintiff's Exhibit 6, R. 456; Testimony, R. 157–158; Plaintiff's Exhibits 39 and 40, R. 465 and 467; Testimony, R. 214, 35; Plaintiff's Exhibits 33 and 31, R. 512, 478; Testimony, R. 237–241, 259–263; Plaintiff's Exhibit 37, R. 545; Testimony, R. 337; Plaintiff's Exhibit 36, R. 537; Testimony, R. 342–356; Plaintiff's Exhibit 22, R. 530; Testimony, R. 288–290; Plaintiff's Exhibit 20, R. 515; Testimony, R. 292–320; Plaintiff's Exhibit 13, R. 546; Testimony, R. 358 to 375; Plaintiff's Exhibit 14, R. 554; Testimony, R. 375 to 377.

[7] Plaintiff's Exhibit 3, R. 572; Plaintiff's Exhibit 38, R. 589; Plaintiff's Exhibit 25, R. 586.

However, only two such forms were produced by petitioner at the trial (R. 240), and the testimony of the managers of the several departments, whose duty it was to complete and file the forms, indicated that the forms were neither understood nor extensively used (cf. R. 182, 192, 287–288). In any event, it was uncontroverted that the petitioner had on sale during the period covered by the investigation at least 349 items with respect to which no records whatsoever were kept which would show how the maximum prices had been determined.[8]

In short, the evidence showed without dispute that in a space of only five months, in but seven of its more than one hundred departments (the only seven of its departments investigated), the petitioner directly and plainly violated the clear and unambiguous terms of the Regulation,

[8] In each of the following departments at least the number of items indicated were purchased after May 18, 1942, in respect of which defendant failed to keep any record as to the manner of determining the maximum lawful price. Department 60: 20 items (Plaintiff's Exhibit 33, R. 512, Testimony, R. 237–240); Department 59: 47 items (Plaintiff's Exhibit 14, R. 554, Testimony, R. 375–376); Department 76: 17 items (Plaintiff's Exhibit 37, R. 545, Testimony, R. 337–340); Department 69: 113 items (Plaintiff's Exhibit 22, R. 530, Testimony, R. 288–291); Department 55: 47 items (Plaintiff's Exhibit 29, R. 477, Testimony, R. 205–207); Department 47: 34 items (Plaintiff's Exhibit 39, R. 465, Testimony, R. 214); Department 26: 71 items, (Plaintiff's Exhibit 6, R. 456, Testimony, R. 157–158).

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in that it (1) made 3,788 sales at prices in excess of the legal maximum, (2) collected at least $4,621.53 more than it was legally entitled to, (3) failed to include on the Statements which it was required to file with the appropriate War Price and Ration Board more than 460 articles which should have been included thereon, and (4) failed to describe with sufficient clarity more than 410 items scheduled on the Statements which it did file. Because the scope of the investigation made by the Office of Price Administration was confined to the seven departments mentioned, no investigation or search for violations of the Act or Regulation in other departments was made. Consequently, no evidence with reference to such other departments was offered at the trial except some evidence with reference to the petitioner's failure to post its maximum prices as required by the Regulation (R. 46–47).

The Administrator does not contend, and the evidence did not show, that these violations were wilful, nor, in the language of the district court (R. 444–445), "of disloyal motive or purpose". Admittedly, the petitioner made efforts to comply with the Act and the Regulation, both before and after the investigation started. According to its testimony offered in support of its affirmative defense, it set up a special department to supervise compliance with the requirements of the Act and the regulations issued thereunder, including the

Regulation here involved. This and other efforts at compliance, however, were not fully carried through and fell considerably short of success. The actual work of assembling the data for the preparation of the reports and statements made and filed by the petitioner, and the duty of determining the maximum lawful price of each article, were left to the managers of the several merchandising departments (R. 18). Forms and instructions were given to these managers, but the reports and statements which they prepared and the prices which they determined were not supervised or checked in any substantial sense by the specially established compliance department.[9] The managers of the departments investigated by the Office of Price Administration took the stand and endeavored to explain their violations of the Regulation as due to oversight and misinterpretation (R. 180, 200, 214, 235, 286, 336, 340, 356). There was also testimony to the effect that *after* the beginning of the Price Administrator's investigation the petitioner took steps to revise its organization and system so as to improve future compliance with the Act and Regulation (R. 230), endeavored wholeheartedly to comply with the

[9] Mr. Levi, who organized and for the first few months administered the petitioner's compliance department or "price control office", testified that he "spot-checked" the information furnished by the buyers for the preparation of the petitioner's statements, but that the check was "small and inadequate" (R. 125).

Act, and proposed to return to identifiable customers the overcharges collected from them and to donate the balance of overcharges to some worthy charity (R. 437).

On March 11, 1943, the district court handed down its opinion (R. 441–447), holding that while the petitioner had violated the law, the violations were "not numerous" in the light of the petitioner's total volume of business and the consequent difficulties of compliance; that the violations, although some might have resulted from negligence or carelessness, were innocent in character; and that the petitioner had acted in good faith and had made a *bona fide* effort to comply with the Act and the Regulation (R. 444). It directed that the temporary restraining order be dissolved and the complaint dismissed. Findings of fact and conclusions of law (R. 447) and a formal judgment (R. 455) followed.

On appeal, the court of appeals (Mr. Chief Justice Groner dissenting) reversed the judgment, holding that where a violation of the Act is shown an injunction should issue as of course.

SUMMARY OF ARGUMENT

Section 205 (a) of the Act conditions the right of the Administrator to an injunction or other order enforcing compliance with the Act solely upon a showing that the defendant has violated

or is about to violate the Act. Since at the trial the Administrator made a clear and uncontroverted showing of repeated and extensive violations by the petitioner, the district court was without discretion to deny the enforcement order requested.

The mandatory character of Section 205 (a) is clear from its language, in that it provides in terms that when the necessary showing has been made an appropriate order of enforcement "shall be granted without bond." There is no room for the application of any asserted rule of statutory interpretation which construes "shall" as permissive when directed by legislatures to courts. Such an interpretation here is precluded by the clear congressional intent, as shown by the background and the legislative history of the Act.

As passed by the House, Section 205 (a) provided for the issuance of an enforcement order "upon a proper showing" by the Administrator. This phrase, as used in comparable sections of earlier federal regulatory statutes, such as the Securities Act of 1933 and the Securities Exchange Act of 1934, had been diversely construed by the federal courts, and in some instances had been held to leave in the courts discretion to grant or withhold an enforcement order on the basis of traditional principles of equity jurisprudence applicable in private injunction suits. A similar provision for the issuance of injunc-

tions "for cause shown" had likewise upon occasion been construed to leave discretion in the courts. Other statutes, such as the National Labor Relations Act, the Federal Trade Commission Act, the Clayton Act, the Investment Company Act of 1940 and the Investment Advisers Act of 1940, had clearly provided for the issuance of injunctions or cease and desist orders upon proof of past violations, and their mandatory character had been accepted by the courts. The Senate Committee, which reported out the bill with amendments after December 7, 1941, chose the latter class of statute as a model, and to that end substituted for the phrase "upon a proper showing" the phrase "upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices." The stated purpose of the Senate Committee to strengthen the Act because of the incidence of war compels the conclusion that the change was intended to forestall judicial conflict, and to make clear that the issuance of an enforcement order was to be mandatory upon proof of violations.

There is no merit in the petitioner's suggestion that the phrase "or other order" opens the door to an order dismissing the complaint. Section 205 (a) on its face contemplates applications by the Administrator for either injunctive orders or affirmative orders "enforcing compliance." The

term "or other order" comprehends orders of the latter class. An order dismissing the complaint is not an order "enforcing compliance." Such an order would not ordinarily be said to be "granted" to the applicant, and is not the kind of order to which a direction for issuance "without bond" would be appropriate. The section-by-section analysis of the bill by the Senate Committee reenforces the plain meaning of the section which its words express.

Judicial maxims reflecting traditional equity practice in injunction suits between private parties have no application to this type of statutory injunction proceeding. Where an injunction is authorized by statute it is enough if the statutory conditions are satisfied. This does not improperly narrow the judicial functions of the courts; they retain their judicial authority and duty to take evidence, to find facts, to state and apply the law, and to fix the precise scope and character of the enforcement order. All that is withdrawn is the authority, after violations of the Act are shown, to decide whether the balance of equities, or the public interest, requires the issuance of an enforcement order. On that question, and on that question alone, Congress has substituted its own judgment.

The imposition of an injunctive sanction regardless of the good faith of the defendant is not remarkable nor inconsistent with legislative tra-

dition. Remedial social legislation directed at such evils as the narcotic traffic, or the misbranding of foods and drugs, has been held properly to impose even criminal sanctions upon innocent violators, in the greater public interest of stamping out the objectionable practices. Protection against the unintentional contributor to inflation is necessary to national economic safety; and there is even less reason for quarreling with the mild civil sanction of injunction in such cases than for objecting to the criminal penalties which in comparable situations have been upheld by the courts.

The petitioner's protestations of good faith and of reformation are therefore irrelevant. The statute does not require any showing by the Administrator of wilfulness or bad faith or of likelihood of repeated violations. In the face of the urgent emergency created by the war, Congress has fashioned a weapon against inflation which the courts are required to make available to the Administrator upon his request and a showing by him that violations have occurred. It is within the proper sphere of congressional judgment to decide, as Congress has here done, that inflationary dangers can only be met by swift judicial action against those who create inflationary incidents, regardless of their motive. The fight against inflation should not be endangered by imposing on the Administrator and his office the demands of time and money necessary to prove ir-

relevant facts, nor by shackling his discretion to decide which proven violators should be restrained.

ARGUMENT

THE ADMINISTRATOR, HAVING PROVED THAT PETITIONER HAD VIOLATED THE ACT, WAS ENTITLED AS OF RIGHT TO AN INJUNCTION

The Administrator at the trial made a clear and uncontroverted showing of repeated and extensive violations of the Act and the Regulation by the petitioner. In the face of this showing the district court was without discretion to withhold the injunction order prayed for in the complaint. We submit that this conclusion follows inescapably from the directive language of the Act, and that it is reinforced not only by the Act's legislative history and background but also by the practical considerations of wartime emergency which surrounded the Act's adoption. The contrary arguments of the petitioner, drawn largely from conventional equity practice, are without relevance to this case.

I

SECTION 205 (a) OF THE ACT IN TERMS REQUIRES THE ISSUANCE OF AN INJUNCTION OR OTHER ORDER ENFORCING COMPLIANCE UPON A SHOWING THAT VIOLATIONS HAVE OCCURRED

1. *The Language of the Act, and the Reasons Impelling Its Adoption*

Section 205 (a) of the Act conditions the right of the Administrator to an injunction solely upon

a showing by the Administrator that the defendant has engaged, or is about to engage, in acts or practices which violate the Act. When such a showing is made, "a permanent or temporary injunction, restraining order, or other order shall be granted without bond." The statutory language is mandatory. The usually mandatory character of the word "shall" (*Escoe* v. *Zerbst*, 295 U. S. 490, 493; cf. *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180) is here fortified by the contrasting use of the word "may" earlier in the same sentence. The section provides that the Administrator "may" apply for an injunction and that the injunction "shall" be granted. The use of the words "may" and "shall" in one sentence implies that each is used in its ordinary sense and not in the sense of the other. *Ballou* v. *Kemp*, 92 F. (2d) 556, 560 (App. D. C. 1937); *Federal Land Bank* v. *Hansen*, 113 F. (2d) 82, 84 (C. C. A. 2, 1940); *Jensen* v. *Lehigh Valley R. Co.*, 255 Fed. 795 (S. D. N. Y. 1919); *Murray* v. *Edes Mfg. Co.*, 305 Mass. 311, 25 N. E. (2d) 746; *State ex Inf. McKittrick* v. *Wymore*, 343 Mo. 98, 119 S. W. (2d) 941; *Smith* v. *School Dist.*, 241 Mich. 366, 217 N. W. 15; *State ex rel. Wandling Bros.* v. *Board of Education*, 127 Ohio St. 336, 188 N. E. 566.

The essential purpose of this statutory remedy is the protection of a vital public interest. The prohibited conduct, in and of itself, is deemed by the legislature injurious to the public. The reme-

dial order is therefore required without regard to the motive or intent of the violator. Absolute liability is no new thing in the law. Its appropriateness, indeed its necessity, have been recognized by both courts and legislatures where "the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se.*" *United States* v. *Balint,* 258 U. S. 250, 252; *United States* v. *Dotterweich,* October Term, 1943, No. 5, decided Nov. 22, 1943; Holmes, *The Common Law* (1938), pp. 115–117.

The compelling reasons of public policy which call for this unqualified type of preventive statutory remedy in the field of monetary inflation are obvious. Effective control of inflation is a matter of the utmost urgent necessity for a nation at war today. (See the message of the President, July 30, 1941, 87 Cong. Rec. 6457, H. Rep. 1409, 77th Cong., 1st sess.) As said by the Senate Committee on Banking and Currency: "of all the consequences of war, except human slaughter, inflation is the most destructive" (S. Rep. No. 931, 77th Cong., 2d sess. (1942) pp. 2–3). Wartime raises in its sharpest form the peril of the "spiral" or runaway tendency in an inflationary price structure. By inexorable economic law every inflationary event or act produces further inflationary effects. The consequences of an inflationary incident, whether wilful or innocent, are rapid and

pervasive; its results are virtually impossible to undo. The effects of violations of wartime price controls are cumulative and irremediable, irrespective of the motive or intent, the good or the bad faith, of the violator. Accordingly, the enforcement of those controls must be speedy, uniform, and effective. Unless the Act is speedily, uniformly, and effectively enforced, the purpose of the Act—the protection of the economic life of the nation while at war—will not be realized. Inflation begins in little steps. If it is to be checked, it must be met early. Once inflation has gained headway, it is too late to stop it. "This is no matter of degree—successive trickles grow into torrents which sweep away the dam" (*Brown* v. *Mars, Inc.*, 135 F. (2d) 843, 849 (C. C. A. 8, 1943)).

To the end that the Act shall be speedily, uniformly, and effectively enforced, therefore, Congress has in specific and unambiguous terms provided that upon a showing that a person has violated the Act, an injunction shall issue. This does not make of the injunction a penalty imposed for past misdeeds. It looks only to the future. It forbids only illegal conduct, or, if affirmative in form, it simply compels obedience to the law. No punishment can be invoked under it unless and until it has been violated. True, the Act requires that an injunction issue upon a showing of past violations, even though there is no showing of

probable future violations in the specific case. But that does not transform a remedy into a penalty. Rather it represents a legislative determination that the likelihood of future violations by proven past violators is so serious that the protection of an exigent public interest requires the danger to be met with the safeguard of a court order. True it is also that injunctions are conventionally "framed and issued in terms . . . of the necessities of the *future*" (Pet. Br. 19). So it will be here, but as to one particular Congress has substituted its judgment of those necessities for that ordinarily exercised by the courts.[10]

That Congress intended the Administrator's right to an injunction to be absolute upon a showing that the Act has been violated is made clear by the legislative history of the Act when considered against the background of other statutes and the judicial interpretation placed upon them.

2. *The Legislative Background and History of the Act.*

Federal statutes providing for injunction in aid of their enforcement are common. Their provisions, however, vary widely. Some, such as the Sherman Act[11] and the Fair Labor Standards

[10] For this reason the district court's conclusion (R. 454) that an injunction "would have no effect by way of insuring better compliance in the future" is immaterial. The court below so held (R. 596).

[11] Act of June 2, 1890, c. 647, 26 Stat. 209, 15 U. S. C. 4.

Act,[12] merely confer jurisdiction on the district courts to enjoin violations of their terms; others, such as the Securities Act of 1933[13] and the Securities Exchange Act of 1934,[14] direct the issuance of injunctions, but only on proof of either *present* or threatened violations. Such statutes are variously qualified by a requirement of "cause shown", or "a proper showing."[15] A contrasting type, on the other hand, provides for the issuance of an injunction or cease and desist order upon proof of past violations, without qualification. Among statutes of this type are the Investment Company Act of 1940,[16] the Investment Advisers Act of 1940,[17] the Clayton Act,[18] the Federal Trade Commission Act,[19] and the National Labor Relations Act.[20]

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[12] Section 17, Act of June 25, 1938, c. 676, 52 Stat. 1069, 29 U. S. C. 217.

[13] Section 20 (b), Act of May 27, 1933, c. 38, 48 Stat. 86, 15 U. S. C. 77t (b).

[14] Section 21 (c), Act of June 6, 1934, c. 404, 48 Stat. 899, 15 U. S. C. 78u (a) (c).

[15] Under the Fair Labor Standards Act an injunction may be had only "for cause shown". Under the Securities Act of 1933 and the Securities Exchange Act of 1934 an injunction may be had only "upon a proper showing".

[16] Section 42, Act of August 22, 1940, c. 686, Title I, 54 Stat. 842, 15 U. S. C. 80a–41.

[17] Section 209, Act of August 22, 1940, c. 686, Title II, 54 Stat. 853, 15 U. S. C. 80b–9.

[18] Section 11, Act of Oct. 15, 1914, c. 323, 38 Stat. 734, 15 U. S. C. 21.

[19] Section 5, Act of Sept. 26, 1914, c. 311, 38 Stat. 719, 15 U. S. C. 45.

[20] Section 10 (c), Act of July 5, 1935, c. 372, 49 Stat. 543, 29 U. S. C. 160 (c).

When the Emergency Price Control Act was under consideration, information was available to Congress showing that under statutes of the type which did not unqualifiedly provide for the issuance of injunctions upon proof of violation, there had been considerable diversity of interpretation in the courts. The departments and agencies charged with their enforcement had maintained their view that an injunction should issue upon a showing of a violation alone, and this view had found sympathetic treatment by some courts. Cf. *Otis & Co.* v. *Securities and Exchange Commission*, 106 F. (2d) 579 (C. C. A. 6, 1939); *American Fruit Growers* v. *United States*, 105 F. (2d) 722 (C. C. A. 9, 1939). But the courts had not always agreed with this view, and when they had disagreed with it, they had frequently seized upon qualifying language to justify their conclusion. Thus, the words "upon a proper showing" as used in the injunction sections of the Securities Act of 1933 and the Securities Exchange Act of 1934 had been construed by some courts as permitting them in their discretion to grant or deny injunctive relief, as the equities of each particular case might require. Cf. *Securities and Exchange Commission* v. *Lawson*, 24 F. Supp. 360 (D. Md. 1938).[21] A similar construction had been placed

[21] Petitioner states in its brief (p. 34) that the Administrator has conceded that Congress left discretion in the courts under the Securities Act of 1933 and the Securities Exchange Act of 1934. We have not made, and do not

on the phrase "for cause shown" as used in the Fair Labor Standards Act. *Fleming* v. *Phipps*, 35 F. Supp. 627 (D. Md. 1940).

On the other hand, full effect had been given to those statutes which provided without qualification for the issuance of an injunction, or cease and desist order, upon a showing of a violation without more. Thus, Section 5 of the Federal Trade Commission Act (Act of Sept. 26, 1914, c. 311, 38 Stat. 719, 15 U. S. C. 45), which provides that the Federal Trade Commission "shall" issue a cease and desist order whenever it finds that a person has been using an unfair method of competition, had been construed as requiring the Commission to issue such an order upon finding that such practices had been engaged in. *Educators Ass'n* v. *Federal Trade Commission*, 108 F. (2d) 470 (C. C. A. 2, 1939); *Perma-Maid Co.*

now make, any such concession. The concession referred to (our memorandum on certiorari, pp. 10–11) applied only to the Sherman Act. The Securities and Exchange Commission has constantly pressed in the courts its view that the Securities Act and the Securities Exchange Act *require* the issuance of an injunction upon proof of violations, without more; and as noted in the text that view has been sympathetically regarded by at least one court. *Otis & Co.* v. *Securities and Exchange Commission*, 106 F. (2d) 579 (C. C. A. 6, 1939). As we develop further in the text, we believe that the divergent treatment accorded by the courts to such statutes as the Securities and Securities Exchange Acts was in large measure responsible for the attempt of Congress to use in *this* Act language sufficiently plain and unequivocal to still all further controversy.

v. *Federal Trade Commission,* 121 F. (2d) 282 (C .C. A. 6, 1941).

Again, the National Labor Relations Act (Act of July 5, 1935, Sec. 10 (c), c. 372, 49 Stat. 543, 29 U. S. C. 160 (c)) provides that if the "Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board *shall* state its findings of fact and *shall* issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action * * * as will effectuate the policies of this Act." Thus, while the Board enjoys some scope for the exercise of discretion in determining whether a particular case is one requiring an affirmative order and in choosing the particular affirmative relief to be ordered, it has no discretion to withhold the issuance of a cease and desist order where unfair labor practices have been found to have been engaged in. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261, 265. This is the interpretation placed upon the section by the Board itself.[22]

[22] In its brief filed with the Circuit Court of Appeals for the Fifth Circuit in the case of *National Labor Relations Board* v. *Express Publishing Co.*, No. 9408, the Board stated:

"Upon the finding that the respondent had violated Section 8 (1) and (5) of the Act, the order requiring defendant to cease and desist from the unfair labor practices found

Section 205 (a) of Emergency Price Control Act is patterned on this latter type of statute.

The petitioner in its brief (Pet. Br. 35–39) seeks to avoid the parallel of these statutes not only by asserting that they have been judicially and administratively construed to leave discretion in the Administrator—in which, as we have shown, *supra*, footnote 22, the petitioner is in error—but also by pointing out that the language of the statutes refers to action by administrative agencies, and not to action by the courts. The language of these statutes does so refer, but that

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was mandatory. Section 10 (c) of the Act; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265."

Every brief filed by the Board in a similar case has contained the same statement.

On page 36 of its brief in this Court the petitioner here says: "There are numerous cases in which the Board has declined, in the exercise of a sound discretion, to issue a cease and desist order where the violations of the Act have ceased under circumstances which would indicate that they would not be resumed." This statement, if it means that the Board has on any occasion declined to issue a cease and desist order where it has found that unfair labor practices have been committed, is wholly inaccurate. From the date of its creation, the Board has never in any case declined to issue a cease and desist order, where it has found that such practices have been committed. In each of the eleven decisions of the Board cited by petitioner, the Board expressly declined to find that unfair labor practices had been committed. In all but three of the decisions the Board declined to inquire whether such practices had been engaged in because it felt that it was precluded from considering the matter by compromises or settlements reached before the decisions. In the other three cases—*A. H. Wirz, Inc.*,

does not defeat their historical pertinence. When Congress proposed in these statutes to require administrative agencies as quasi-judicial bodies to follow a certain course on the finding of certain facts, it found apt language of a directory character to express its intention; and the courts have respected this expression of intention. When Congress has used similar directory language to require similar action by the courts themselves, the courts should be no more reluctant to respect the congressional intention. Administrators are not courts, but the distinction is no solvent for the problems of this case; indeed, this Court has pointed out that a cease and desist

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9 N. L. R. B. 480 (1938), *Talladega Cotton Factory*, 9 N. L. R. B. 207 (1938), *Ferguson Bros. Manufacturing Co.*, 9 N. L. R. B. 189 (1938)—the Board refrained from inquiring whether the respondents had engaged in particular unfair labor practices on the ground that it was unnecessary to do so because the respondents had complied with the Trial Examiners' recommendations for remedying the effects of such practices if in fact they had been committed and constituted unfair labor practices. In each case the Board retained jurisdiction of the case. Likewise, in none of the decisions of the Federal Trade Commission cited by petitioner was there any finding that past violations had occurred. In none of the cases were the complaints dismissed. The Commission merely "closed" the cases subject to their being reopened without determining whether violations had been committed. Any tortuous inference that petitioner may seek to draw from this administrative practice is more than offset by the clear language of the statute which defines the Commission's duty, and by reported decisions readily accessible to Congress. Cf. *Perma-Maid Co.* v. *Federal Trade Commission*, 121 F. (2d) 282 (C. C. A. 6, 1941).

order of the Labor Board closely resembles an injunction order of a court, in that, when it is judicially confirmed, the courts may be called on to enforce it by contempt proceedings. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 433. The need for prompt and effective injunction against future misconduct by past violators is at least as great here as in the fields of labor relations and unfair trade practices.

That Congress intended to follow the model of these statutes in conferring upon the Administrator the absolute right to an injunction upon a showing of past violations is made even clearer by the legislative history of the Act.

When H. R. 5479, for which the Act in its final form was substituted, passed the House of Representatives, Section 205 (a) read:

> Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, or any regulation, order, or requirement thereunder, he may make application to the appropriate court for an order enjoining such acts or practices or for an order enforcing compliance with this Act or such a regulation, order, or requirement, and *upon a proper showing* a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Even at this stage of its legislative history the Act substituted the past tense for the present tense as

used in the Securities Act of 1933 and the Securities Exchange Act of 1934." But the bill still required that "a proper showing" be made as a condition to the issuance of an injunction.

As we have seen, there had been some disagreement among the courts as to whether such language in other statutes gave them discretion to grant or withhold relief as the equities of each individual case might require. Accordingly, the Senate Committee, with the conflicting judicial interpretations of the words "upon a proper showing" available to it, struck those words from the

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[11] The Securities Act of 1933 and Securities Exchange Act of 1934 provide for the issuance of an injunction against a person who "is engaged or is about to engage" in certain acts and practices which are denounced as unlawful. In *Securities and Exchange Commission* v. *Torr*, 87 F. (2d) 446 (C. C. A. 2, 1937), it was held that the Securities Exchange Act was to be given a literal interpretation and that an injunction should not be issued against one who had engaged in illegal practices but who was not engaging or about to engage in such practices at the time of suit. It subsequently developed in that case that violations had continued up until after the commencement of the suit, and an injunction was issued. *Securities and Exchange Commission* v. *Torr*, 22 F. Supp. 602 (S. D. N. Y. 1938). Similarly, the Grain Futures Act provided for the revocation of the license of a broker who "is violating" the Act. In *Cutten* v. *Wallace*, 298 U. S. 229, it was held that the license of a broker could not be revoked unless he was violating the Grain Futures Act at the time the revocation proceedings were started. The statute was later amended by the Commodity Exchange Act so as to permit the revocation of the broker's license for past violations. 49 Stat. 1498–1499, 7 U. S. C. 9. See *Nichols & Co.* v. *Secretary of Agriculture*, 131 F. (2d) 651 (C. C. A. 1, 1942).

bill and substituted for them the words "upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices." The change is compatible only with an intention that an injunction should issue as of course upon proof that the Act or the regulations have been violated.

The Senate Committee made its report on January 2, 1942. It pointed out that the House had passed the Act before Pearl Harbor; that "what was before a moderate program of rearmament and friendly aid is now unlimited national mobilization in a war for survival"; that the bill had to be "reconsidered in the light of those changed conditions"; that in amending the House bill, *"the Committee has sought to strengthen it"*; that "the Committee has largely accepted the substantive provisions of the House bill, but regards prompt enactment of *this stronger bill* as imperative to the safety of our country" (Sen. Rep. No. 931, 77th Cong., 2d sess. (1942), pp. 1–3).[24]

The intention that an injunction should issue as of course upon proof of violations is further evidenced by the Senate Committee's analysis of Section 205 (a) of the Act. At page 25 of the report, in the part devoted to a section-by-section analysis

[24] There were, of course, other changes in the bill besides that under discussion; but in view of the Senate Committee's report it is reasonable to assume that *any* change proposed was offered for the purpose of strengthening the bill.

of the bill, the Committee on Banking and Currency said:

> Section 205 (a) authorizes the Administrator to enforce compliance with the provisions of section 4 of the bill, whenever in his judgment, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4, by making application to the appropriate court *for an order enjoining* such acts or practices, *or for an order enforcing compliance* with such provision. Upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a temporary or permanent injunction, restraining order or other order is to be granted without bond. [Emphasis supplied].

It is to be noted that in its analysis of the section the Committee uses the expression "is to be granted without bond," thus construing the words "shall be granted without bond" as mandatory and not discretionary. *White* v. *Disher,* 67 Cal. 402, 7 Pac. 826.

Against this the petitioner urgently presses upon the Court language from page 10 of the Senate Committee report, where it was said that the injunctive remedy was included in the bill "in common with substantially all regulatory statutes." Even were there a conflict, the gen-

erality of this language (used in the course of the Committee's general description of the bill) must yield to the more specific description and construction of Section 205 (a) quoted above. But there is no conflict. The injunctive remedy *is* included here "in common with substantially all regulatory statutes," but that is not to say—and the Senate Committee did not say—that the injunctive remedy here included is identical in all its features with the remedy in "substantially all regulatory statutes." It could not be, for as we have seen there is no single form of injunctive remedy provided uniformly in federal regulatory statutes. Out of the divergent examples available, the Senate Committee selected, and Congress adopted, the particular form of injunctive remedy best fitted to meet the pressing public danger of monetary inflation, and in the interest of the greater public good chose to disregard questions of good faith and promises of good behavior on the part of individual violators.

II

THE EQUITABLE DOCTRINES URGED BY THE PETITIONER HAVE NO PLACE IN THE APPLICATION OF SECTION 205 (a)

The right of the United States and its agencies to an injunction provided by statute stands on a footing different from the right of private parties to an injunction in equity.

The latter is to protect private interests. The statutory injunction, on the other hand, is for carrying out congressional policies and vindicating public rights. Commonly, as here, it is furnished in a situation where equity jurisprudence would not necessarily have afforded relief. In such a case the conditions which have traditionally hedged about the granting of equitable injunctions have no application. The terms of the statute alone set the conditions which surround the remedy it creates. "The equitable doctrines relied on do not militate against the capacity of a court of equity as a proper forum in which to make a declared policy of Congress effective." *United States* v. *San Francisco*, 310 U. S. 16, 31.

This principle has found judicial expression in the application of a number of modern regulatory statutes. For example, the remedy for enforcement of orders of the National Labor Relations Board by decrees of the circuit courts of appeals (29 U. S. C. 160 (e)) is also equitable in nature. Yet this Court has held that where the Board has complied with the statutory requirements, the courts have no discretion to withhold a decree of enforcement even though they may differ with the Board as to the justice or wisdom of the Board's order. *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 342. Similarly, in *Securities and Exchange Commission* v. *Jones*, 85 F. (2d) 17 (C. C. A. 2, 1936),

certiorari denied, 299 U. S. 581, objection to a complaint for injunction under the Securities Act of 1933, on the ground that the complaint failed to allege the absence of an adequate remedy at law, was overruled "since the injunctive relief is provided for by the statute." And in *United States* v. *Adler's Creamery,* 110 F. (2d) 482 (C. C. A. 2, 1940), certiorari denied, 311 U. S. 657, it was held, with reference to the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U. S. C. 608a (6) and (8), that "the claim that it is inequitable to grant a mandatory injunction to collect a debt past due must yield to the statutory provision of such a remedy." The rule is concisely stated in *Henderson* v. *Burd,* 133 F. (2d) 515, 517 (C. C. A. 2, 1943), decided under the Emergency Price Control Act: "Where an injunction is authorized by statute it is enough if the statutory conditions are satisfied."

Here Congress, in the interests of a timely and uniform enforcement of a measure designed to protect the economic life of the nation at war, has changed the usual rules of equity governing the issuance of injunctions, and has prescribed one condition, and one condition only, which the Administrator must meet in order to secure an injunction. When that condition is met the statute requires the court to issue an injunction. In the language of this Court in *United States* v. *San Francisco,* 310 U. S. 16, 30, "this case does not call for a balancing of equities or for the

invocation of the generalities of judicial maxims in order to determine whether an injunction should have issued."

1. *The language of the Act precludes the petitioner's proposed construction*

Notwithstanding the express statement in the Act of a single condition to the Administrator's right to an injunction, the petitioner, as did the dissenting justice below, urges that there be read into the Act a further condition, that the court shall be satisfied that the issuance of the injunction would be in accordance with traditional equitable doctrines. The petitioner seeks support for this view from the fact that Section 205 (a) directs the issuance of a "permanent or temporary injunction, restraining order, *or other order.*"

The words "or other order", however, find full import in the section without resort to the devitalizing construction proposed. The Administrator under Section 205 (a) may apply for two types of orders: (1) for an order enjoining the proscribed acts or practices, or (2) for an order enforcing compliance with the Act. It is thus within his discretion to apply for an order *forbidding* illegal conduct—in other words, a permanent or temporary injunction or temporary restraining order, as those terms are commonly understood—or, if he deems it more appropriate, for an order *commanding* affirmative action to

comply with the law. The duty of the court to aid the Administrator in "enforcing compliance" is thus most aptly phrased in terms of a duty to issue either an order prohibitive in nature, or some affirmative form of "other order", as the exigencies of the case may demand.

The petitioner suggests that the power to issue an "other order" embraces the power to issue an order dismissing the complaint, nothwithstanding proof by the Administrator that violations have happened. Such an order, or even an order such as suggested by the dissenting justice,[25] could hardly be regarded as an order "enforcing compliance."[26] Nor is the expressed duty of the court to "grant" an order on the Administrator's application consistent with the issuance of an order denying the Administrator all the relief for which he applies. And a direction by Congress that orders under the section be granted "without bond" would be far from apt if orders of dismissal were included in the congressional contemplation.

Had Congress intended petitioner's construction of the term "or other order", it would not have stricken from the bill prior to passage the phrase "upon a proper showing", which, at least

[25] "An order retaining [the case] on the docket, with the right in the Administrator, on reasonable notice and a showing that violations of the Act had been resumed, to again apply to the court for injunctive relief" (R. 610).

[26] See Report of the Senate Committee on Banking and Currency (Rep. No. 931, 77th Cong., 2d sess., p. 25).

in the view of some courts, would have imported the very result which petitioner now seeks to graft upon the Act.

The petitioner (Br. p. 25) terms our view of the congressional intent, and that of the court below, "pure hypothesis." If it is hypothesis, it is soundly grounded on the historical differentiation between affirmative orders and prohibitory orders. While an injunction may at times be used to coerce affirmative action, there is historical doubt as to the propriety of the use of the term with respect to a final decree of affirmative character. In strictness, the term "mandatory injunction" has been limited to interlocutory or preliminary injunctions.[27] Until comparatively recent times such injunctions were rarely granted. Indeed, it was once held that even a preliminary or interlocutory injunction would never be granted in mandatory form.[28] This rule is no longer generally followed, but lingering inhibitions persist, and explain the care of Congress to authorize expressly the issuance of affirmative orders as well as prohibitory injunctions.

This differentiation between affirmative and negative orders is not peculiar to the Emergency Price Control Act. It occurs in many regulatory statutes which contemplate enforcement of administrative orders by judicial action. For example,

[27] Pomeroy, *Equity Jurisprudence* (5th Ed. 1941), Sec. 1359.

[28] Id., *ibid.*

the Agricultural Adjustment Act of 1933 gives the district courts jurisdiction "specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to" the Act. 7 U. S. C. 608a (6). Similarly, the Interstate Commerce Act (49 U. S. C. 16 (12)) authorizes judicial enforcement of orders of the Interstate Commerce Commission "by a writ of injunction or other proper process, mandatory or otherwise."

These historical facts and statutory precedents reenforce the construction which the language of the Act itself requires.[29]

As for the decisions of the district courts construing Section 205 (a) which the petitioner cites in support of its position, not all of them are

[29] The petitioner urges (Br. pp. 25–27) that the word "shall," when used in a grant of authority to the judiciary, is not ordinarily mandatory, but is the equivalent of "may". Such a rule, if it exists, is no more than a rule of statutory interpretation which must always yield to a clearly manifested congressional intention. *Ex parte Jordan*, 94 U. S. 248, 251; *United States* v. *Flynn*, 11 F. (2d) 899 (W. D. N. Y. 1926); *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 342. In a case cited and heavily relied upon by the petitioner (*Becker* v. *Lebanon and M. Ry. Co.*, 188 Pa. 484, 496, 41 Atl. 612, 613 (1898)), it is said that "even if it [the word "shall" as directed to a court] be intended to be mandatory, it must be subject to the necessary limitation that a proper case has been made out for the exercise of the power". Here, Congress has said what a proper case shall be, and the Administrator, having proved such a case, is entitled to the relief he asks.

authority for the construction urged. In some, injunctions were denied not in the exercise of judicial discretion but because of the absence of adequate proof of violations. The cases cited which do tend to support the petitioner's contention were for the most part decided from the bench, and their language in many instances suggests that they were based on the authority of the district court's action in this case. At most, the cases below are in sharp conflict. In each of the following cases it was held that the Administrator was entitled to an injunction as of right upon proof that the Act had been violated: *Henderson* v. *Baldwin* (W. D. Pa. 1942) OPA Service, 622:43; *Brown* v. *Sackler* (D. Miss. 1943) OPA Service, p. 620:204; *Brown* v. *Society Brand Hat Co.* (E. D. Mo. 1943) OPA Service, p. 620:206; *Henderson* v. *C. Thomas Stores, Inc.*, 48 F. Supp. 295 (D. Minn. 1942);[30] *Brown* v. *Osorio* (D. P. R. 1943) OPA Service, p. 620:202; *Brown* v. *Buchsbaum* (S. D. N. Y. 1943) OPA Service, p. 620:306; *Bowles* v. *Home Run Bakery* (D. Hawaii 1943) not yet reported; *Bowles* v. *California Scrap Corp.* (N. D. Cal. 1943) OPA Service, p. 620:291. Cf. also *Henderson* v. *Detweiler* (D. Neb. 1942) OPA Serv-

[30] The petitioner seeks to distinguish this case on the ground that the court "found 'apathy and indifference' and 'inexcusable carelessness'. No attempt was made to correct mistakes. In such a case an injunction properly issues. There was no equity whatever on the side of the defendant" (Pet. Br. p. 40). The short answer is that the court did nothing

ice, p. 622:28; *Henderson* v. *Glosser* (W. D. Pa. 1942) OPA Service, p. 620:17; *Henderson* v. *Morgan* (D. Utah 1942) OPA Service, p. 622:72; *Brown* v. *McNeil* (W. D. Wis. 1943) 1 Price Control Cases, par. 51,815.

2. *Section 205 (a) does not improperly limit the discretion of the courts as courts of equity*

The petitioner in its brief (p. 22) contends that the Act as construed by the court below requires the issuance of an injunction "upon proof of *one* violation, no matter how far removed in time, how trivial in nature, or how innocent its cause" and that, viewed realistically, "the court below has held that *every* seller of goods in the United States *must* be enjoined by the courts if the Administrator chooses to demand it." The implication of the argument is that such a "novel and far-reaching step" cannot have been intended by

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of the kind. It found (p. 301) that the defendants had "admittedly, *either* through error, misunderstanding, or inexcusable carelessness", violated the Act. It declined to ascertain the excuses for the violations, saying (p. 303): "The Court does not find on this showing, however, that the violations herein enumerated were contumacious or willful. It may well be that they were entirely occasioned through carelessness, neglect and misunderstanding. Mutual and the Stores Company have stated in open court that they are anxious to comply strictly with the letter of the law. The Court has no reason to doubt their good faith or sincerity * * *." Nevertheless, the injunction issued. Just such a case has been made by the Administrator against the petitioner here.

Congress, and that therefore the Administrator's construction should be rejected.

To this argument there are several answers. In the first place, the case put is not this case. The petitioner's violations were many; they were not remote in time from the beginning of the suit; and they were due at least in part to carelessness. The construction which the petitioner condemns as extreme is therefore not involved here. It would be enough to support the judgment below if the Act were read so as to require an injunction upon a showing of substantial violation.[31] And the question where, beyond this point, the line is to be drawn is a futile one. Cf. Holmes, J., in *Noble State Bank* v. *Haskell*, 219 U. S. 104, 112;[32] *United States* v. *Laudani*, October Term, 1943, No. 71, decided January 3, 1944.

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[31] We do not suggest that the application of the Act should be so limited. However, if it were, or if it were construed to require a showing of probable future violations, we submit that the record below satisfies fully the need for such a showing. Any implications to the contrary in the opinion, findings of fact, or conclusions of law of the district court are clearly erroneous, and would require reversal. As the court of appeals said (R. 596): "The evidence would not support such findings".

[32] Cf. also the statement in the same case: "The power to compel, beforehand, cooperation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end."

But there are other fundamental objections to the contention. Congress gave the Price Administrator a herculean task. He was called upon to frame price and rent regulations that might range over virtually our entire economy. He was charged with the duty of enforcing these regulations effectively so as to prevent inflation. Surely it was to be expected that the legislature which imposed on the Administrator such vast obligations in time of emergency would entrust him with great responsibilities. In enforcing the Act he could, practically, invoke court sanctions against only a small proportion of violators,[33] and if he was to operate successfully he must be endowed with, and trusted to exercise with discretion, the widest possible power of selection.[34] The Act reflects congressional appreciation of this need for wide scope of judgment in the Administrator. It does not *require* him to proceed whenever he

[33] This is emphasized by the petitioner's assertion (Br. p. 22) that every seller in the country must have violated the price regulations at some time.

[34] Cf. *United States* v. *Dotterweich*, October Term, 1943, No. 5, decided November 22, 1943: "To attempt a formula embracing the variety of conduct whereby persons may responsibly contribute in furthering a transaction forbidden by an Act of Congress, to wit, to send illicit goods across state lines, would be mischievous futility. In such matters the good sense of prosecutors, the wise guidance of trial judges, and the ultimate judgment of juries must be trusted. Our system of criminal justice necessarily depends on 'conscience and circumspection in prosecuting officers.'"

finds infractions; it *permits* him to do so. The faithful performance of his duties would impel him strongly to use his power of selection to bring to court only those cases which have significance from the viewpoint of obtaining wide compliance with the regulations. It is not unreasonable to suppose that Congress saw in this natural tendency to self-restraint a very real safeguard against suits grounded on trivial, or genuinely innocent, or remote, violations.

We have urged above the analogy of the National Labor Relations Act, and we urge it again here. The petitioner (Br. p. 43) rejects this analogy on the ground that under that act "the exercise of discretion by the administrative tribunal is surrounded with the normal safeguards—hearings, reports, exceptions, briefs, and the like." But, as we have shown, *supra,* footnote 22, the discretion of the National Labor Relations Board inheres not in the judgment whether to issue a compliance order when a violation has been shown (since such issuance is mandatory), but in the judgment whether to institute an administrative proceeding at all. At that stage—the stage of selection of cases for action—the discretion is as unprotected by procedural hedges as is the discretion of the Price Administrator in the selection of cases for injunctive proceeding in the courts. In both situations the procedural safeguards come into play only when

the hearing is held to determine, on the proof, whether a violation has occurred; and if so, what particular form of remedy to apply. Under the National Labor Relations Act that issue is determined by the Board (subject to modification by the court); here it is determined by the court; but the issues are identical.

The construction which we urge does not, as the petitioner implies, make a mere rubber stamp of the courts. Their responsibilities here are far greater than under the National Labor Relations Act, for here they are not bound by the findings of the Administrator if supported by evidence. In a proceeding instituted by the Administrator, the court exercises the true judicial function of determining whether the Administrator has proved the violations he has charged. In the discharge of this function the court weighs evidence, finds facts, and construes and applies the law. When the violation of law is established to the satisfaction of the court, judicial judgment finds further latitude in the determination of the precise form and scope of the remedy. Cf. *Henderson* v. *Burd*, 133 F. (2d) 515, 517 (C. C. A. 2, 1943); *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 265. The only element of judgment withdrawn from the courts is the judgment *whether* to enforce the Act when violations are proven. On that, the Congress has

plainly and explicitly substituted its own judgment.[35]

3. *Section 205 (a) reasonably rejects as irrelevant evidence of good faith and of reformation*

Wilfulness is not ordinarily a necessary ingredient of the case which must be made to secure a statutory injunction. See cases cited pp. 37–38, *supra*. Under the Emergency Price Control Act the Administrator need not show that the proven violations were wilful. This clearly follows from the inclusion of the word "wilfully" in Section 205 (b), providing criminal sanctions, and from its conspicuous omission from Section 205 (a). Cf. *Missel* v. *Overnight Motor Transportation Co.*, 126 F. (2d) 98 (C. C. A. 4, 1942), affirmed, 316 U. S. 572.

Admittedly, the purpose of an injunction is to deter and not to punish. The fact that the petitioner in the past may not have violated the Act wilfully—may have acted in good faith—may support an inference that it will act in good faith in the future. But the same fact will not support or

[35] Even on that, there remains some play for application of the maxim *de minimis*. See *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 607; *Goldberg* v. *Worman*, 37 F. Supp. 778 (S. D. Fla. 1941); *Gerdert* v. *Certified Poultry & Egg Co.*, 38 F. Supp. 964 (S. D. Fla. 1941). In this connection, however, it should be noted that the fact that a violation was single would not necessarily justify resort to the maxim. Even single violations may often be so flagrant, or so large, as to warrant judicial proceedings.

sustain an inference that the petitioner will not in the future continue to violate the law as it has in the past. It may reasonably be supposed, on the record before the Court, that the petitioner will not in the future intentionally or purposely violate the Act. In terms of danger to the public interest, however, the innocent violation produces the same inflationary consequences as the guilty. Each is equally dangerous to the national welfare in wartime. Both must be judicially restrained if the statute is to be made practically effective.

The petitioner suggests that an injunction against a willing conformist is a futile thing, and that Congress should not be supposed to have demanded such a remedy from the courts. But by petitioner's own admission, good faith did not prevent its extensive violation of the Act in the past; and by the same token, if its protestations of past good faith are sincere—which we do not question—there is no reason to suppose that good faith alone, without the stimulus added by an outstanding injunction, will any more successfully secure compliance in the future. Congress well recognized here, as often elsewhere in enacting remedial social legislation, that the best way to bring about general public observance of high standards of conduct is to impose absolute responsibility for meeting such standards. Difficulties which can be most plausibly explained as inevitable if room is left for explanation are more likely to

be avoided if the law requires that they must be.[36]

The paramount considerations of public need justifying statutory provisions which, like Section 205 (a), impose civil sanctions notwithstanding protestations of good faith have often been recognized by the courts. Thus, in *Gimbel Bros.* v. *Federal Trade Commission*, 116 F. (2d) 578 (C. C. A. 2, 1941), a cease and desist order of the Federal Trade Commission was enforced against a department store which had published on two successive days a single advertisement inadvertently misdescribing certain merchandise. The court emphasized the protective rather than punitive purpose of the Federal Trade Commission Act. Whether or not the advertiser knew that its representation was false, the deception of purchasers and the diversion of trade from competitors was the same. Good faith was no defense.[37]

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[36] "There is no more certain way of securing attention to the safety of the men, an unquestionably constitutional object of legislation, than by holding the employer liable for accidents. Like the crimes to which I have referred they probably will happen a good deal less often when the employer knows that he must answer for them if they do." Holmes, J., concurring in *Arizona Employers Liability Cases*, 250 U. S. 400, 431, 432–433.

[37] See also *L. & C. Mayers Co., Inc.* v. *Federal Trade Commission*, 97 F. (2d) 365 (C. C. A. 2, 1938); *Missel* v. *Overnight Motor Transportation Co.*, 126 F. (2d) 98, 111 (C. C. A. 4, 1942), affirmed, 316 U. S. 572; *Perma-Maid Co.* v. *Federal Trade Commission*, 121 F. (2d) 282, 284 (C. C. A. 6, 1941); *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. (2d) 91, 94 (C. C. A. 5, 1939).

Even criminal penalties may be imposed despite proof of innocent intent or good faith, when the emphasis of the law is upon "achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se.*" *United States* v. *Balint,* 258 U. S. 250, 252; *United States* v. *Dotterweich,* October Term, 1943, No. 5, decided November 22, 1943.

If criminal penalties may be so imposed, there is certainly no reason for supposing that, in the grave emergency created by the inflationary dangers of wartime, Congress meant less than it said in imposing the relatively mild civil sanction of injunction as a weapon against even innocent violations of the Act. The injunction in itself calls for no punishment. If it is obeyed, no penalties of any nature will follow. But though it will work little or no hardship on one who intends conscientiously to comply with the law, it is badly needed as a means of national social protection against one who does not. And even if, in a particular case, the court may be satisfied that the particular defendant intends in good faith to comply with the law, the facts of a particular case cannot justify overriding the congressional demand for injunction against all those proven by the Administrator to have engaged in past violations.[38]

[38] Though the injunction, importing a judicial warning of punishment in case of further violations even by innocent past violators, is sorely needed as a lever for the maintenance

Reformation, or proof that violations have now ceased, is no more compelling an answer to the demand for an injunction than is proof of past good faith. The claim has often been made that cease and desist orders under the Clayton Act, the Federal Trade Commission Act and the National Labor Relations Act should not issue when the proof showed that violations had ceased; and the claim has almost as often been denied.[39] The

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of adequate standards of social conduct, the petitioner and all others similarly situated are fully protected against actual unjust punishment on account of future trivial or inadvertent infractions. The courts retain unalloyed their right and duty to inflict or withhold, as justice may require, punishment for violation of the injunction. *Edison Electric Light Co.* v. *Goelet*, 65 Fed. 612 (S. D. N. Y. 1894); *Iowa Barb Steel-Wire Co.* v. *Southern Barbed-Wire Co.*, 30 Fed. 615 (E. D. Mo. 1887); *Morse* v. *Domestic Sewing Machine Co.*, 38 Fed. 482 (D. Mass. 1889).

[39] Clayton Act (38 Stat. 734, 15 U. S. C. 21): *Federal Trade Commission* v. *Goodyear Tire Company*, 304 U. S. 257 (1938). Federal Trade Commission Act (38 Stat. 719–720, 52 Stat. 111–112, 15 U. S. C. 45): *Bunte Bros.* v. *Federal Trade Commission*, 104 F. (2d) 996 (C. C. A. 7, 1939); *Educators Ass'n* v. *Federal Trade Commission*, 108 F. (2d) 470 (C. C. A. 2, 1939); *Perma-Maid Co.* v. *Federal Trade Commission*, 121 F. (2d) 282, 284 (C. C. A. 6, 1941); *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. (2d) 673, 686 (C. C. A. 8, 1926); *Fairyfoot Products Co.* v. *Federal Trade Commission*, 80 F. (2d) 684, 686 (C. C. A. 7, 1935); *Federal Trade Commission* v. *A. McLean & Son*, 84 F. (2d) 910, 912 (C. C. A. 7, 1936); *Federal Trade Commission* v. *Wallace*, 75 F. (2d) 733, 738 (C. C. A. 8, 1935); *Federal Trade Commission* v. *Good-Grape Co.*, 45 F. (2d) 70 (C. C. A. 6, 1930); *Guarantee Veterinary Co.* v. *Federal Trade Commission*, 285

petitioner rests heavily upon cases under the Fair Labor Standards Act,[40] such as *Walling* v. *Buettner*, 133 F. (2d) 306 (C. C. A. 7, 1943), certiorari denied, 319 U. S. 771, and *Fleming* v. *Phipps*, 35 F. Supp. 627 (D. Md. 1940), as showing that a court of equity will not enjoin what has in good faith been discontinued before the suit for injunction was brought. But these cases, whether rightly

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Fed. 853, 859–60 (C. C. A. 2, 1922); *Arkansas Wholesale Grocers Ass'n* v. *Federal Trade Commission*, 18 F. (2d) 866, 871 (C. C. A. 8, 1927); *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307, 310 (C. C. A. 7, 1919).

Contra: L. B. Silver Co. v. *Federal Trade Commission*, 292 Fed. 752 (C. C. A. 6, 1923); *Federal Trade Commission* v. *Civil Service Training Bureau*, 79 F. (2d) 113 (C. C. A. 6, 1935). See *Butterick Co.* v. *Federal Trade Commission*, 4 F. (2d) 910, 913 (C. C. A. 2, 1925). In these cases the courts failed to refer to the statutory language, and insofar as they hold or contain certain dicta to the contrary, they must be deemed overruled by *Federal Trade Commission v. Goodyear Tire Company*, 304 U. S. 257, 260 (1938), cited *supra*.

National Labor Relations Act (49 Stat. 543; 29 U. S. C. 160): *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197 (1938); *National Labor Relations Board* v. *Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7, 1939); *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9, 1938); *National Labor Relations Board* v. *Gerling Mfg. Co.*, 103 F. (2d) 663, 664 (C. C. A. 7, 1939); *Eagle-Picher Mining and Smelting Co.* v. *National Labor Relations Board*, 119 F. (2d) 903, 910 (C. C. A. 8, 1941); *National Labor Relations Board* v. *Pure Oil Co.*, 103 F. (2d) 497, 498 (C. C. A. 5, 1939); *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. (2d) 618 (C. C. A. 6, 1943).

[40] Act of June 25, 1938, c. 676, 52 Stat. 1060; 29 U. S. C. 217.

decided or not, were decided under a statute which conferred upon the courts injunctive jurisdiction without clear qualification or direction as to the grounds for injunctive action. The court which decided *Walling* v. *Buettner, supra,* held in *Bunte Bros.* v. *Federal Trade Commission,* 104 F. (2d) 996 (C. C. A. 7, 1939), that no such doctrine applies under a statute in terms requiring an enforcement order upon proof of past violations. The Emergency Price Control Act is such a statute.

Practical considerations of gravest import explain and justify the obviously deliberate departure of Congress from the ordinary rules of equity jurisprudence. Violations of statutes and regulations which control the complex business affairs of today cannot be easily detected and demonstrated. Their discovery and proof require extensive investigation by skilled personnel, and involve large expenditures of time and money. Commonly, therefore, violations are suspended when business, by the fact of investigation, learns that its conduct is under suspicion. Added precautions, protestations of good faith, and demonstrations of the will to comply, are easily placed in the foreground by the time that the administrators are in a position to put their cases before the courts. *Mutatis mutandis,* the views expressed by the court in *Otis & Co.* v. *Securities and Exchange Commis-*

sion, 106 F. (2d) 579, 583 (C. C. A. 6, 1939), are persuasive here:

> * * * in view of the practical necessity of an investigation by the Commission prior to its institution of any proceeding, it is clear that, if the construction contended for by appellant were adopted the injunction provided for would be a remedy of slight efficacy. A dealer who saw the challenge of his activities that is implied in an investigation would probably discontinue them pending the investigation. It would seldom, if ever, be possible to show that a dealer was engaged in or about to engage in prohibited acts or practices when suit began, since the necessary investigation would nearly always have warned the dealer to desist.

The petitioner's claim to immunity because of its showing of this familiar pattern of behavior would in effect require the Administrator to close his case in simple reliance on a statement of good intentions given "in prophecy of or dread of suit" (*United States* v. *U. S. Steel Corp.,* 251 U. S. 417, 445). If the judgment of the district court stands, it will inevitably stand as a judgment condoning violations of the Act. This danger, even in the case of unintentional violators, Congress has tried to avert.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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JANUARY 1944.

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SUPREME COURT OF THE UNITED STATES.

No. 316.—October Term, 1943.

The Hecht Company, Petitioner, *vs.* Chester Bowles, Price Administrator of the Office of Price Administration. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[February 28, 1944.]

Mr. Justice Douglas delivered the opinion of the Court.

Sec. 205(a) of the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App. Supp. II, §§ 901, 925) provides: "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond." The question in this case is whether the Administrator, having established that a defendant has engaged in acts or practices violative of § 4 of the Act is entitled as of right to an injunction restraining the defendant from engaging in such acts or practices or whether the court has some discretion to grant or withhold such relief.

Sec. 4(a) of the Act makes it unlawful for a person to sell or deliver any commodity in violation of specified orders or regulations of the Administrator. A regulation issued under § 2 of the Act and effective in May, 1942 (7 Fed. Reg. 3153) provided that no person should sell or deliver any commodity at a price higher than the authorized maximum price (§ 1499.1) as fixed or determined by the regulation.[1] Since maximum prices were fixed

[1] Sec. 1499.2 provided in part: "Except as otherwise provided in this General Maximum Price Regulation, the seller's maximum price for any commodity or service shall be: (a) In those cases in which the seller dealt in

with reference to earlier base periods the regulation also provided for the preservation and examination of existing records.[2] And provision was likewise made for the keeping of current records reflecting sales made under the regulation[3] and for the filing of maximum prices with the Administrator.[4]

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the same or similar commodities or services during March 1942: The highest price charged by the seller during such month—(1) For the same commodity or service; or (2) If no charge was made for the same commodity or service, for the similar commodity or service, most nearly like it; or (b) In those cases in which the seller did not deal in the same or similar commodities or services during March 1942: The highest price charged during such month by the most closely competitive seller of the same class—(1) For the same commodity or service; or (2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it. 'Highest Price Charged During March 1942'. For the purposes of this General Maximum Price Regulation, the highest price charged by a seller 'during March 1942' shall be: (a) The highest price which the seller charged for a commodity delivered or service supplied by him during March 1942; or (b) If the seller made no such delivery or supplied no such service during March 1942 his highest offering price for delivery or supply during that month."

The seller's maximum price for a commodity which cannot be priced under § 1499.2 was to be determined by the seller pursuant to a formula prescribed in § 1499.3.

[2] Sec. 1499.11 entitled "Base-period records" provided in part: "Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall: (a) Preserve for examination by the Office of Price Administration all his existing records relating to the prices which he charged for such of those commodities or services as he delivered or supplied during March 1942, and his offering prices for delivery or supply of such commodities or services during such month; and (b) Prepare, on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing: (1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identification of each such commodity or service; and (2) All his customary allowances, discounts, and other price differentials."

[3] Sec. 1499.12 entitled "Current records" provided: "Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices for those commodities or services."

[4] Sec. 1499.13(b) provided: "On or before June 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the appropriate War Price and Rationing Board of the Office of Price Administration a statement showing his maximum price for each such commodity, together with an appropriate description or identification of it. Such statement shall be kept up to date by such person by filing on the first day of every succeeding month a statement of his maximum price for any cost-of-living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity."

There is no substantial controversy over the facts. Petitioner operates a large department store in Washington, D. C. and did a business of about $20,000,000 in 1942. There are 107 departments in the store and each sells a separate line of merchandise. In the fall of 1942 the Administrator started an investigation to determine whether petitioner was complying with the Act and the regulation. The investigation was a "spot check", confined to seven departments. In each of the seven departments violations were disclosed. As a result this suit was brought. The complaint charged violations of the maximum price provisions of the regulation and violations of the regulations governing the keeping of records and reporting to the Administrator. The Administrator prayed for an injunction enjoining petitioner from selling, delivering or offering for sale or delivery any commodity in violation of the regulation and from failing to keep complete and accurate records as required by the regulation. In its answer petitioner pleaded among other things that any failure or neglect to comply with the regulation was involuntary and was corrected as soon as discovered.

Numerous violations both as respects prices and records were discovered. Thus in six of the seven departments investigated there had occurred between May and October, 1942 some 3700 sales in excess of the maximum prices with overcharges of some $4600. The statements filed with the Administrator were deficient, some 400 items of merchandise being omitted. And there were over 300 items with respect to which no records were kept showing how the maximum prices had been determined.

There is no doubt, however, of petitioner's good faith and diligence. The District Court found that the manager of the store had offered it as a laboratory in which the Administrator might experiment with any regulation which might be issued. Prior to the promulgation of the regulation the petitioner had created a new section known as the price control office. That office undertook to bring petitioner into compliance with the requirements of the regulation in advance of its effective date. The head of that office together with seven assistants devoted full time to that endeavor. But the store had about 2,000 employees and over one million two hundred thousand articles of merchandise. In the furniture departments alone there were over fifty-four thousand transactions in the first ten months of 1942. Difficulties were

encountered in interpreting the regulation, in determining the exact nature of an article and whether it had been previously sold and at what price, etc. The absence of adequate records made it difficult to ascertain prices during the earlier base-period. Misunderstanding of the regulation, confusion on the part of employees not trained in such problems of interpretation and administration, the complexity of the problem, and the fallibility of humans all combined to produce numerous errors. But the District Court concluded that the "mistakes in pricing and listing were all made in good faith and without intent to violate the regulations."

The District Court also found that the mistakes brought to light "were at once corrected, and vigorous steps were taken by The Hecht Company to prevent recurrence of these mistakes or further mistakes in the future." The company increased its price control office to twenty-eight employees. New methods of internal control were instituted early in November, 1942 with the view of avoiding future violations. That new system of control "greatly improved" the situation. Petitioner undertook to make repayment of all overcharges brought to light by the investigation in case of customers who could be identified. It proposed to contribute the remaining amount of such overcharges to some local charity. The District Court concluded that the issuance of an injunction would have "no effect by way of insuring better compliance in the future" and would be "unjust" to petitioner and not "in the public interest". It accordingly dismissed the complaint. 49 F. Supp. 528. On appeal the Court of Appeals for the District of Columbia reversed that judgment, one judge dissenting. 137 F. 2d 689. That court held that the findings of the District Court were supported by substantial evidence, except that it did not consider whether the evidence supported the findings that an injunction would not insure better compliance in the future and would be unjust to petitioner. In its view the latter findings were immaterial. For it construed § 205(a) of the Act to require the issuance of an injunction or other order as a matter of course, once violations were found.

The case is here on a petition for a writ of certiorari which we granted because of the importance of the problem in the administration of the Act.

Respondent insists that the mandatory character of § 205(a) is clear from its language, history and purpose. He argues that

"shall be granted" is not permissive, that since the same section provides that the Administrator "may" apply for an injunction and that, if so, the injunction "shall" be granted, "may" and "shall" are each used in the ordinary sense. It is pointed out that when the bill (for which the Act in its final form was substituted) passed the House, § 205(a) provided that "upon a proper showing" an injunction or other order "shall be granted without bond."[5] The words "upon a proper showing" were stricken in the Senate and were replaced by the words "upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices." And the Senate Report in its analysis of § 205(a) stated that "upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a temporary or permanent injunction, restraining order or other order is to be granted without bond." S. Rep. No. 931, 77th Cong., 2d Sess., p. 25. Further support for the view that the issuance of an injunction is mandatory once violations are shown is sought in the pattern of federal legislation which provides relief by injunction in aid of law enforcement. Some of those statutes[6] contain provisions quite close to the language of § 205(a). Others provide that an injunction or restraining order shall be granted "upon a proper showing"[7] or that federal district courts shall have jurisdiction to restrain violations "for cause shown".[8] The argument is that when Congress desired to give the district courts discretion to grant or withhold relief by injunction it chose apt words to make its desire plain.

We agree that the cessation of violations, whether before or after the institution of a suit by the Administrator, is no bar to the issuance of an injunction under § 205(a). But we do not think that under all circumstances the court must issue the injunction or other order which the Administrator seeks.

It seems apparent on the face of § 205(a) that there is some room for the exercise of discretion on the part of the court. For

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[5] H. R. 5479, 77th Cong., 1st Sess.

[6] "Upon a showing that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond." Investment Company Act of 1940, 54 Stat. 842, 15 U. S. C. § 80a-41; Investment Advisers Act of 1940, 54 Stat. 853, 15 U. S. C. § 80b-9.

[7] Securities Act of 1933, 48 Stat. 86, 15 U. S. C. § 77t(b); Securities Exchange Act of 1934, 48 Stat. 899, 15 U. S. C. § 78u(e).

[8] Fair Labor Standards Act, 52 Stat. 1069, 29 U. S. C. § 217.

the requirement is that a "permanent or temporary injunction, restraining order, or other order" be granted. Though the Administrator asks for an injunction, some "other order" might be more appropriate, or at least so appear to the court. Thus in the present case one judge in the Court of Appeals felt that the District Court should not have dismissed the complaint but should have entered an order retaining the case on the docket with the right of the Administrator, on notice, to renew his application for injunctive relief if violations recurred. It is indeed not difficult to imagine that in some situations that might be the fairest course to follow and one which would be as practically effective as the issuance of an injunction. Such an order, moreover, would seem to be a type of "other order" which a faithful reading of § 205(a) would permit a court to issue in a compliance proceeding. However that may be, it would seem clear that the court might deem some "other order" more appropriate for the evil at hand than the one which was sought. We cannot say that it lacks the power to make that choice. Thus it seems that § 205(a) falls short of making mandatory the issuance of an injunction merely because the Administrator asks it.

There is, moreover, support in the legislative history of § 205(a) for the view that "shall be granted" is less mandatory than a literal reading might suggest. We have already referred to a portion of the Senate Report which lends some support to the position of the Administrator. But in another portion of that Report there is the following reference to suits to enjoin violations of the Act: "In common with substantially all regulatory statutes, the bill authorizes the official charged with the duty of administering the act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. Such courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case." S. Rep. No. 931, *supra*, p. 10. A grant of *jurisdiction* to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances. We cannot but think that if Congress had intended to make such a drastic departure from the traditions of equity practice, an unequivocal statement of its purpose would have been made.

We do not stop to compare the provisions of § 205(a) with the requirements of other federal statutes governing administrative agencies which, it is said, make it mandatory that those agencies take action when certain facts are shown to exist.[9] We are dealing here with the requirements of equity practice with a background of several hundred years of history. Only the other day we stated that "An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity." *Meredith* v. *City of Winter Haven*, 320 U. S. 235. The historic injunctive process was designed to deter, not to punish. The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. We do not believe that such a major departure from that long tradition as is here proposed should be lightly implied. We do not think the history or language of § 205(a) compel it. It should be noted, moreover, that § 205(a) governs the procedure in both federal and state courts. For § 205(c) gives the state courts concurrent jurisdiction with federal district courts of civil enforcement proceedings. It is therefore even more compelling to conclude that, if Congress desired to make such an abrupt departure from traditional equity practice as is suggested, it would have made its desire plain. Hence we resolve the ambiguities of § 205(a) in favor of that interpretation which affords a full opportunity for equity courts to treat enforcement proceedings under this emergency legislation in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress has sought to protect. *United States* v. *Morgan*, 307 U. S. 183, 194 and cases cited.

We do not mean to imply that courts should administer § 205(a) grudgingly. We repeat what we stated in *United States* v. *Morgan*, *supra*, 191, respecting judicial review of administrative action: ". . . . court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each act-

[9] National Labor Relations Act, 49 Stat. 453, 29 U. S. C. § 160(c); Clayton Act, 38 Stat. 734, 15 U. S. C. § 21; Federal Trade Commission Act, 38 Stat. 719, 15 U. S. C. § 45(b).

ing in the performance of its prescribed statutory duty with
regard to the appropriate function of the other in securing
plainly indicated objects of the statute. Court and agency are
means adopted to attain the prescribed end, and so far as th
duties are defined by the words of the statute, those words sho
be construed so as to attain that end through coordinated acti
Neither body should repeat in this day the mistake made by
courts of law when equity was struggling for recognition as
ameliorating system of justice; neither can rightly be regarded
the other as an alien intruder, to be tolerated if must be,
never to be encouraged or aided by the other in the attainm
of the common aim." The Administrator does not carry the
burden of the war against inflation. The courts also have b
entrusted with a share of that responsibility. And their dis
tion under § 205(a) must be exercised in light of the large
jectives of the Act. For the standards of the public interest
the requirements of private litigation measure the propriety
need for injunctive relief in these cases. That discretion sho
reflect an acute awareness of the Congressional admonition t
"of all the consequences of war, except human slaughter, inflati
is the most destructive" (S. Rep. No. 931, *supra*, p. 2) and t
delay or indifference may be fatal. Whether the District Co
abused its discretion in dismissing the complaint is a quest
which we do not reach. The judgment must be reversed and
cause remanded to the Court of Appeals for that determination.

Reversed.

Mr. Justice FRANKFURTER agrees that § 205(a) of the Emergen
Price Control Act, apart from dispensing with any requirem
for a bond, does not change the historic conditions for the exerc
by courts of equity of their power to issue injunctions, accordi
to which the Court of Appeals should now dispose of this cause.

Mr. Justice ROBERTS is of opinion that the judgment of the Cou
of Appeals should be reversed and that of the District Cou
affirmed.